



5419 Hollywood Boulevard  
 Suite C-356  
 Los Angeles, CA 90027  
 323.819.0300  
**www.ActiumLLP.com**

14 November 2019

Attorney General Xavier Becerra  
 ATTN: Initiative Coordinator  
 P.O. Box 944255  
 Sacramento, CA 94244-2550

Dear Attorney General Becerra,

All across California, people are concerned about homelessness. Like all issues, there are two sides (or more) to the debate. One side primarily believes the government should be more aggressive in making our streets safer for all people. The other side thinks government should be more lenient, believing that economic hardships are the singular cause. And everyone debates how best to engage those who are living on our streets.

I believe there is more in common between the sides than we think. It is not humane to leave people who need help to fend for themselves on the streets. Certain acts by those people, which hurt society as a whole, should be treated as cries for help and opportunities to engage people to get them help. Doing so will also help law-abiding citizens enjoy the safe and clean use of our streets, and encourage respect for our laws.

With those principles in mind, I submit the following initiative. This is the amended version, and represents the final version for title and summary. For the "chief purpose and points" of this initiative, please use this cover letter, along with the "purposes" and "findings and declarations" that appear on the next page.

Sincerely,

**Mike Gatto**

California State Assemblyman (ret.)

**Founding Partners**

Assemblyman (Ret.) Mike Gatto  
 Allan D. Johnson

19 - 0024 Amdt. #

**RECEIVED**

**NOV 19 2019**

**INITIATIVE COORDINATOR  
 ATTORNEY GENERAL'S OFFICE**

## **Section 1. Title**

This act shall be known as the "**California Compassionate Intervention Act.**"

## **Section 2. Purposes**

This measure seeks to get help for those who need it, and thereby also greatly reduce nuisance behavior on our streets.

## **Section 3. Findings and Declarations**

The People of the State of California hereby find and declare all of the following:

1. Respect for civil liberties is an important value. But public nuisances are a significant and growing problem in our state.
2. Many people causing public nuisances need help, but they cannot otherwise get it for themselves, because of personal issues or a lack of awareness of available resources.
3. Federal homeless census data shows that about 40 percent of the homeless are addicts and another 25 percent have "severe" mental illness. The Los Angeles Times recently analyzed data from the Los Angeles Homeless Services Authority, and found that 76% of individuals living outside, on the streets, reported being (or were observed to be) affected by mental illness, substance abuse, poor health, or a physical disability. We need to get these people help, in a way that respects their civil liberties.
4. Respect for the law is important to a well-functioning society. Disregard for the law disadvantages all people. When someone breaks the law, it should be enforced. However, certain criminal acts should be treated not as something meriting harsh punishment, but as a "cry for help." By actually enforcing existing laws, and creating no new crimes, we can engage individuals who need help. Once that person's life is in order, and appropriate steps have been taken to treat that individual, the records of their brush with law-enforcement should be expunged in the court's discretion.
5. Many of our existing infrastructure systems are burdened inappropriately. Emergency rooms are clogged. Streets and sidewalks, which should be available for everyone's safe use, are not. It is critical for the state's survival to channel people who need help into appropriate resources.
6. It is not humane to leave people who need help alone on the streets.

The People of the State of California hereby ordain as follows:

#### **Section 4. Intervention Predicates**

Section 19.5 is added to the Penal Code to read:

**19.5.** The following crimes shall be known as Intervention Predicates: Violations of Penal Code sections 314, 370, 372, 640(d)(1), 640(d)(3), 647(a), 647(c), 647(e), 647(f); and Violations of Health & Safety Code sections 11350(a), 11364(a), 11365, 11377(a), 11550(a).

Section 836.7 is added to the Penal Code to read:

**836.7.** In order to protect public health and provide timely assistance to those in need, it is the will and intent of the people of the state of California that the Intervention Predicates be strictly enforced, but also treated as calls for help. Notwithstanding any other law, when a peace officer as defined by sections 830.1, 830.31, or 830.33 has probable cause to believe an individual has committed any of the offenses listed in Section 19.5, that peace officer shall make a lawful arrest and take that individual into custody.

Section 1320.36 is added to the Penal Code to read:

**1320.36.** Notwithstanding any other law, a person arrested or detained for any of the violations listed in Section 19.5 shall not be released without a risk assessment conducted within 72 hours of booking.

(a) For persons arrested or detained for any of the violations listed in Section 19.5, the Court shall review the criminal history of the person, including the person's history of failure to appear in court within the past three years, and any supplemental information reasonably available that addresses the arrested person's risk to public safety, risk to self, or risk of failure to appear in court as required.

(b) Based on these factors, the Court shall decide whether pretrial detention is appropriate, and shall prioritize the trials of those individuals.

Section 1370(i) is added to the Penal Code to read:

**1370(i).** Any person arrested or detained for any of the violations listed in Section 19.5 who is adjudged to be covered by the provisions in this chapter (commencing with section 1367), shall be prioritized for Section 1370(a)(1)(B)(i) treatment if so qualified. Such individuals shall also be subject to an evaluation and remedies pursuant to Chapter 5 (commencing with Section 5450) and/or section 5150 of the Welfare and Institutions Code.

## **Section 5. Specialized Benefits, Treatment, and Therapy Courts**

Section 69510 is added to the Government Code to read:

**69510.** In every county with a population greater than 100,000, there is hereby established within the superior court of the county a "Specialized Benefits, Treatment, and Therapy Court." The cases of defendants charged with any of the Intervention Predicates in Section 19.5 of the Penal Code shall be handled by the aforementioned Court.

Section 69511 is added to the Government Code to read:

**69511.** The court referenced in section 69510 shall coordinate efforts between existing government agencies that offer financial assistance, addiction counseling, drug treatment, mental-health services, and health care (including prescription-drug) coverage.

(a) If the Court determines that the defendant's crime was caused in whole or in part by economic need, the Court shall provide the defendant with information, referrals, and immediate assistance in securing and accessing housing, financial assistance, and social-safety-net programs under Division 9, Part 5 of the Welfare and Institutions Code (commencing with section 17000), and Part 6 (commencing with section 18900) and similar programs. Any sentence imposed shall remain at the discretion of the Court, or as guided or mandated by law.

(b) If the Court determines that the defendant's crime was caused in whole or in part by drug use or addiction, the Court shall provide the defendant with information and assistance with addiction counseling and drug treatment, with a focus on community-based treatment programs where appropriate.

(1) Notwithstanding any other provision of law, the Court shall sentence that defendant to no less than 90 days and no more than 364 days, with the sentence to be served by participation in a court-approved addiction-counseling and drug-treatment program, including, where appropriate in the discretion of the Court, such programs offered within the county jail system, or another program requiring confinement, or a secure but community-based treatment program under the supervision of the Court and/or probation system.

(A) This section shall not apply to felonies, or defendants who, due to multiple charges or prior convictions or any enhancement, are required by law to serve time greater than 364 days.

(B) This section shall not apply to felonies or defendants who, due to multiple charges or prior convictions or any enhancement, in the Court's permissible discretion should serve time greater than 364 days.

(2) The Court may require the defendant to appear before the Court again for another evaluation, at which time the Court may add terms of continuing counseling to the defendant's sentence and/or probation.

(c) If the Court determines that the defendant's crime was caused in whole or in part by a mental-health issue, the Court shall provide the defendant with information and assistance to secure mental-health services, including prescription-drug coverage.

(1) The Court shall sentence that defendant to the maximum allowable sentence permitted by law, not to exceed 364 days, with the sentence to be served in a public-funded hospital, a special mental-health-focused hospital within a county jail, or another mental-health-treatment facility, including private, non-profit, or community-based facilities under contract.

(A) This section shall not apply to felonies, or defendants who, due to multiple charges or prior convictions or any enhancement, are required by law to serve time greater than 364 days.

(B) This section shall not apply to felonies or defendants who, due to multiple charges or prior convictions or any enhancement, in the Court's permissible discretion should serve time greater than 364 days.

(2) If the Court determines that the defendant is a potential or actual harm to him or herself due to mental-health issues, the Court shall appoint a guardian or conservator to make decisions for the defendant with respect to treatment and housing.

(3) Before a sentence terminates, for individuals with court-appointed guardians or conservators, the defendant shall appear before the Court again for another evaluation, at which time the Court, with the assistance of the guardian or conservator, shall decide if continuing treatment is appropriate. At this evaluation, the provisions in Chapter 5 (commencing with Section 5450) and/or section 5150 of the Welfare and Institutions Code may also be applied.

(d) If the Court determines that none of the needs in subsections (a) through (c) are present, it shall sentence the defendant in its discretion and consistent with existing law, notwithstanding this enactment.

Section 69512 is added to the Government Code to read:

**69512.** It is the intent of the people of the state of California that convictions handed down by a Specialized Benefits, Treatment, and Therapy Court be automatically expunged after a reasonable period consistent with this section.

(a) Convictions where the judge makes a determination pursuant to subsection (a) shall be automatically expunged after one year.

(b) Convictions where the judge makes a determination pursuant to subsection (b) shall be expunged after the court enters a finding that the defendant has adhered to a drug-addiction treatment protocol.

(c) Convictions where the judge makes a determination pursuant to subsection (c) may be expunged in the discretion of the court at the appropriate time.

(d) In all cases handled by the Court, a defendant or probationer shall be informed of the right and privilege to petition for a certificate of rehabilitation and pardon.

(e) In any subsequent prosecution of the defendant for any crime designated as an "Intervention Predicate" pursuant to Penal Code section 19.5, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information had not been dismissed or expunged.

(f) Nothing in this section shall be construed as a prohibition on a defendant utilizing the procedures in Penal Code section 1203.4.

Section 69513 is added to the Government Code to read:

**69513.** In all matters, the Court and its personnel shall consider cultural, linguistic, gender, sexual orientation, age, and special needs of those based on any characteristic listed or defined in Section 11135 of the Government Code. Provision shall be made to remove barriers to mental health services as a result of having limited-English-speaking ability or cultural differences. Provision shall be made to identify and meet the needs of the LGBT community in any program or accommodations.

## **Section 6. Redirected/Repurposed Funding from Proposition 63 "Millionaires Tax"**

Section 5891 (e) is added to the Welfare and Institutions Code to read:

**5891(e).** Notwithstanding anything in this Act or any other law, the funding established pursuant to this Act shall be prioritized to each county, on a per capita basis, to implement and execute Sections 69510 - 69513 of the Government Code and sections 836.7 and 1320.36 of the Penal Code. A continuous annual appropriation is hereby made, using funding established pursuant to this Act, in an amount not less than 43% of the total funding and revenues collected pursuant to this Act, to the counties on a per capita basis. Counties receiving such funds shall appropriate funds to the courts, to drug-treatment and mental-healthcare programs (including such programs in jails), and to peace-officer training programs, to effectuate the California Compassionate Intervention Act. Commencing January 1, 2020 and repeating each year thereafter, the Presiding Justice of each court shall inform the Legislature of an estimate for ongoing costs for implementing Sections 69510 - 69513 of the Government Code.

## **Section 7. Efficient Prioritizing of Housing Funding**

Any county, any city (including charter cities), any county and city, and any Joint Powers Authority shall prioritize extant funding for projects for homeless housing, toward converting into permanent housing existing structures not currently used for housing, and/or toward projects with the lowest absolute per-unit cost, or both. This section shall be construed to require prioritization of resources towards bringing housing to bear in the quickest and most cost-effective manner. Nothing in this Section or this enactment shall be deemed to require reductions in extant outreach programs to the homeless, or reductions to county or municipal task forces or personnel tasked with assisting the homeless population.

## **Section 8. Accountability**

To ensure that the policies, intent, and provisions of this Act are followed, the independent State Auditor shall conduct a comprehensive audit of the programs referenced in this Act within three years of its enactment.

## **Section 9. Amendment**

This Act can only be amended in the Legislature by a statute passed by a vote of two-thirds of the members of both houses. Notwithstanding this section, the Legislature may add to the list of Intervention Predicates in Section 19.5 of the Penal Code by majority

vote. Notwithstanding this section, the Legislature may by majority vote appropriate additional funds to fulfill the purposes and implement the programs of this enactment.

### **Section 10. Application and Severability**

The provisions of this act shall be construed broadly, with maximum effect, to preserve the intent of the people, consistent with constitutional principles. If any provision of this Act or the application thereof is held to be invalid, it shall not affect any other provisions or applications of the Act that can be given any effect without the invalid provision or application, and to this end the provisions of this Act are severable.

### **Section 11. Legal Defense**

If this Act is approved by the voters of the State of California and thereafter subjected to a legal challenge alleging a violation of state or federal law, and both the Governor and Attorney General refuse to defend this Act, then the following actions shall be taken:

- (a) Notwithstanding anything to the contrary contained in Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code or any other law, the Attorney General shall appoint independent counsel to faithfully and vigorously defend this Act on behalf of the State of California.
- (b) Before appointing or thereafter substituting independent counsel, the Attorney General shall exercise due diligence in determining the qualifications of independent counsel and shall obtain written affirmation from independent counsel that independent counsel will faithfully and vigorously defend this Act. The written affirmation shall be made public.
- (c) A continuous appropriation is hereby made from the General Fund to the Controller, without regard to fiscal years, in an amount necessary to cover the costs of retaining independent counsel to faithfully and vigorously defend this Act on behalf of the State of California.